

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
International Paper Company)
Pine Hill Mill)
Pine Hill, Wilcox County, Alabama)
Air Facility ID No. 109-0001)

CONSENT ORDER NO. 09-____-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and International Paper Company, Pine Hill Mill (hereinafter, “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a Pulp and Paper Mill, Air Division Facility No. 109-0001, located in Wilcox County at 7600 Hwy 10 W, Pine Hill, Alabama, 36769 (hereinafter, “the Facility”).
2. The Department is a duly constituted Department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C.

7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On January 1, 2004, the Department issued a Major Source Operating Title V Permit, (hereinafter, “the Permit”) to the Permittee, subject to certain conditions and requirements. The Pine Hill Mill was owned by Weyerhaeuser Corporation at that time.

5. The Permittee’s Enclosures and Closed-Vent Systems are regulated by the Permit, which are subject to Permit General Proviso 16 – Operation of Capture and Control Devices, which states:

All air pollution control devices and capture systems for which this Permit is issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants for purposes of meeting applicable requirements. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants for such purposes shall be established.

6. Permittee’s Enclosure and Closed-Vent Systems are also subject to the requirements of 40 C.F.R. 63, Subpart S - National Emission Standards for Hazardous Air Pollutants for Source Categories. Specifically, 40 C.F.R. §63.450(d)(1) & (2), “Standards for Enclosures and Closed-Vent Systems”, require that:

Each bypass line in the closed-vent system that could divert vent streams containing Hazardous Air Pollutants (hereinafter, “HAPs”) to the atmosphere without meeting the emission limitations in §§63.443, 63.444, or 63.445 shall comply with either of the following requirements:

- (1) On each bypass line, the owner or operator shall install, calibrate, maintain, and operate according to the manufacturer’s specifications a flow indicator that is capable of taking periodic readings as frequently as specified in §65.454(e). The flow indicator shall be installed in the bypass line in such a way as to indicate flow in the bypass line; or

- (2) For bypass line valves that are not computer controlled, the owner or operator shall maintain the bypass line valve in the closed position with a car seal or a seal placed on the valve or closure mechanism in such a way that valve or closure mechanism cannot be opened without breaking the seal.

7. The recordkeeping requirements of 40 C.F.R. §63.454(e) state that:

The owner or operator shall set the flow indicator on each bypass line specified in §63.450(d)(1) to provide a record of the presence of gas stream flow in the bypass line at least once every fifteen minutes.

8. On August 4, 2008, International Paper Company purchased the Pine Hill Mill. On November 20, 2008, the Permittee met with the Department to discuss possible violations, identified in a self-audit, pertaining to its bypass pressure release valves that are associated with its enclosure and closed-vent systems. During the meeting, the Permittee informed the Department that several of the bypass line valves were not being monitored, as required by the Permit and applicable regulations.

9. On June 11, 2009, the Department received confirmation from Permittee that it failed to monitor eight of its bypass valves, in violation of 40 C.F.R. 63, Subpart S and Permit General Proviso 16, and it failed to keep proper records in accordance with 40 C.F.R. §63.454(e) for an additional twenty-one bypass valves. The eight valves in question did not have any flow monitoring equipment installed and lacked seals, in violation of the Permit and applicable regulations. The twenty-one valves in question were computer controlled, which requires that flow records to be maintained for every fifteen minute monitoring interval and these flow records were not maintained by the Permittee. Therefore, the Permittee violated 40 C.F.R. §63.450(d)(1) & (2), Permit General Proviso 16, and 40 C.F.R. §63.454(e) by failing to properly install a flow indicator or car seal on eight bypass valves, by failing to properly

maintain records for twenty-one bypass valves, and by failing to properly maintain and operate its HAPs capture systems.

10. The Permittee has since notified the Department that it plans to have a new database and monitoring system installed and working that will satisfy the requirements of 40 C.F.R. §63 – Subpart S and General Proviso 16 of the Permit. The expected date as to when the Permittee can effectively track and maintain its bypass line monitoring system is July 31, 2009.

11. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each

day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers Permittee's failure to properly operate and maintain the enclosure and close-vent systems' bypass line valves, in violation of 40 C.F.R. §63.450(d)(1) & (2), 40 C.F.R. §63.454(e), and Permit General Proviso 16, to be serious.

B. **THE STANDARD OF CARE:** Permittee did not exhibit a standard of care or commitment commensurate with the requirements of the Permit and applicable regulatory standards with respect to its operation of the HAP emission pollutant capture devices so as to minimize emissions.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** There is no indication that the Permittee derived an economic benefit from these violations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** Upon discovering the bypass line monitoring issues, the Permittee informed the Department.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department has issued two Notice of Violations and three Consent Orders to the Permittee within the past five years, all of which occurred under previous ownership, and all of which are unrelated to the violations addressed in this Consent Order.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay a civil penalty.

G. OTHER FACTORS: It should be noted that this Consent Order is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order (“Order”) with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$15,000.00 in settlement of the compliance issues alleged herein within forty-five days from the effective date of this Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that upon the effective date of this Order it shall be in compliance with the requirements of 40 C.F.R. §63 – Subpart S and General Proviso 16 of the Permit regarding the bypass valves addressed in this Order.

C. The Permittee agrees that all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier’s check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

D. The Permittee agrees that it shall operate in compliance with all conditions of the Permit.

E. The parties agree that this Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Order, to execute the Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Order is intended to operate as a full resolution of the violations which are cited in this Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Order.

H. Neither the fact that Permittee and the Department have entered into this Order, nor the Stipulations and Contentions herein, shall be used for any purpose in this or any other proceeding except the enforcement by the parties of this Order. As to others who are not parties to this Order, nothing contained in herein is an admission by Permittee of the Stipulations and Contentions, and entry into this Order is not an admission by Permittee of liability for conditions at or near the facility or a waiver of any right, cause of action or defense Permittee otherwise has.

I. For purposes of this Consent Order only, the Permittee agrees that the

Department may properly bring an action in the Circuit Court of Montgomery County to compel compliance with the terms and conditions contained herein. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee), and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline due to a *Force Majeure* must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The Department and the Permittee agree that the sole purpose of this Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual

circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Order if future orders, litigation or other enforcement action address new matters not raised in this Order.

K. The Department and the Permittee agree that this Order shall be considered final and effective immediately upon signature of all parties. This Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

L. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with applicable Federal, State, or local laws or regulations.

M. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

O. The Department and the Permittee agree that any modifications of this Order must be agreed to in a writing signed by both parties.

P. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

INTERNATIONAL PAPER
COMPANY

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Janet Neighbors
Mill Manager
Pine Hill Mill

Onis "Trey" Glenn, III
Director

Date Signed: _____

Date Executed: _____